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Brian John Roberts

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599 Lexington Avenue  
33rd Floor  
New York, NY 10022-6030

EXAMINER

LEIVA, FRANK M

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/728,219	<b>Applicant(s)</b> ROBERTS, BRIAN JOHN	
	<b>Examiner</b> FRANK M. LEIVA	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-34,36-39,43-55,60 and 61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-34,36-39,43-55,60 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Acknowledgements***

1. The examiner acknowledges amendments to claims 27-29, 34, 36, 40, 41, 48, 50, 54, 60 and 61 and canceled claim 35 in applicant's submission filed 01 December 2009.

### ***Response to Arguments***

2. Applicant's arguments filed 01 December 2009 have been fully considered but they are not persuasive. Persuasiveness considerations as follows;

3. Applicant's traverse of the restriction was noted and the restriction is maintained; *"Applicant maintains the disagreement with the Office Action's reasoning for the restriction. The Office's previous characterization of the claims is not correct. The interactive game recited in claim 48 is not limited to a lottery game. Neither is the game provided in claim 27. In the most recent Office Action, at paragraph 4, it is alleged that because claim 48 has a preamble "A method of conducting the lottery" that the interactive game recited in claim 48 is limited to a lottery. This is a clear error and a misreading of the plain language of the claim. As an initial matter, Applicant notes that the Office must give the claim its broadest reasonable interpretation in light of the specification. See MPEP 21 11.01."* The examiner needs applicant to state the invention in its proper preamble to describe the invention or admit that the applicant does not have possession of the invention; Is it a "Lottery Game" or just a "Game". The examiner has to look at the invention in light of the specifications, and in the event that the specifications describe more than one invention, restrict the claims to be able to prosecute each invention separately on the merits.

4. Regarding the argument on page 11 of applicant's remarks in regards to claims 27 and 48; *"Even though it is not agreed that Robert's teaches the recited interactive game, Claim 27 and 48 have been further amended to recite that **the interactive game** is an Internet game, and not a scratch off ticket game. Accordingly, combining Roberts with Kaye does not*

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*produce the claimed invention. Claims 27 and 48 have also been amended to recite that the lottery ticket is **a preprinted instant win lottery ticket**, further distinguishing these tickets from the partially printed instant lottery tickets of the cited Robert reference.”* The examiner fails to be able to distinguish between a preprinted and partially printed, since the partially printed is also preprinted. The preprinted instant win lottery ticket does not read over the partially printed instant lottery ticket of Robert’s.

5. Regarding the argument on page 11 of applicant’s remarks in regards to claims 27 and 48; *“Moreover, there is no reasoned explanation given in the present Office Action as to why Roberts and Kaye would be combined in the way described in the Office Action. Even if Roberts arguably generally describes choosing to add an optional supplemental game to an instant lottery game ticket, it does not teach or suggest adding an optional interactive Internet game to an instant lottery ticket. Paragraph 17 purports to provide a reason to make the proposed combination. But paragraph 17 is completely devoid of any reasoning as to why instant lottery tickets should be combined with Kaye’s game.”* The examiner points to paragraph 17 of examiners last action filed 01 June 2009 for the motivation statement, and adds for the instant argument; that very little is required to combine an optional interactive game into Kaye’s invention, since Kaye already teaches the additional interactive game, Roberts just discloses the sale of tickets without special features or standard tickets. It would have been obvious to one of ordinary skill to continue selling the previous type of lottery ticket along with the new feature ticket so as to not loose the previously establish clientele following.

6. Regarding the argument on page 11 of applicant’s remarks in regards to claims 27 and 48; *“Merely because certain references can be combined or modified does not render the resultant combination obvious unless the prior art renders such a combination desirable so as to be predictable. If the desirability of the combination cannot be found in the prior art, then a rationale must be provided that is reasoned from knowledge generally available to one of ordinary skill in the art or based on established scientific principles. See M.P.E.P. 3 2144. At least a convincing line of reasoning must be presented to support the rejection. Ex Parte Clapp, 227 U.S.P.Q. 972 (Bd. Pat. App. & Inter. 1985). It is respectfully submitted that the Examiner has not provided any convincing line of reasoning for making the proposed combination. The*

*reasoning in the rejection is at best a mere hindsight reconstruction unsupported by evidence."*

As mentioned above the motivation statement was located in paragraph 17 following the rejection.

7. Regarding the argument on page 12 of applicant's remarks in regards to claims 27 and 48; *"Moreover, in addition to the arguments made against this proposed combination of Kaye and Roberts in the previous response, Applicant previously added a recitation to claim 27 that expressly recites the computing device is configured to provide access to the interactive game responsive to an indication of whether the lottery ticket was activated to provide access to the interactive Internet game. This feature is not in Kaye, and is not provided by Roberts, which has nothing to do with computer-based interactive games whatsoever."* After parsing the disclosure of Roberts and finding 62 mentions of a computer, whether it is a remote computer or just computer 18 or the terminal or the diagram of figure 3. It is indicative that the ticket and its activation are done via a computer, and thus it is a computer based game. As for the indication of activation, Kaye's "Destiny" code along with the ticket number serves as an indication of activation; if the ticket is not activated, the "Destiny" code is not generated nor printed. Testing of a code is inherent, all codes need to be verified or decrypted going through and compared to test data to verify validity.

8. Regarding the argument on page 12 of applicant's remarks in regards to claim 28; *"Separately and independently with respect to claim 28 and 48, neither Kaye nor Roberts teach or suggest printing interactive game information on an instant win lottery ticket responsive to an indication the player has chosen to purchase the instant win lottery ticket for use in an interactive Internet game"*, the examiner points to Kaye fig. 13 item 252 "print out a ticket with encrypted control data", and Roberts column 4 lines 1-4, "The terminal 14 includes a printer 19 which then prints the computer 18 supplied "play data" and ticket completion information. Both references disclose printing game information indicative of the purchase of the ticket and both use the internet as a medium, (Kaye Figure 6).

9. Regarding the argument on page 12 of applicant's remarks in regards to claim 28; *"Separately and independently, with respect to claim 29 and 49, neither Kaye nor Roberts teach or suggest a reader in the ticket dispenser configured to read the ticket identifier from the*

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*lottery ticket prior to the ticket being activated for use in the interactive Internet game. Kaye is silent as to this feature. Applicant notes that the current Office Action expressly indicates the Roberts is not being relied on for the interactive game, as discussed above, so it is impossible that Roberts teaches anything related to activating for use in an interactive Internet game. The cited section of Roberts, 4:7-21 has nothing whatsoever to do with interactive Internet games of any sort, and therefore cannot supply this missing feature."* It is important to realize that although the game of Roberts is not being played on the internet, that the teaching of printing all the information required by the already combined invention stated in claim 27 and covered by Kaye and Roberts would be a predictable result. A § 103(a) rejection relies on both references and alone Roberts does not cover the data for the interactive Internet Game, but since the combination has been made and Roberts teaches printing information on the ticket related to game data it is obvious to one of ordinary skill to see it as a predictable result.

**10.** Regarding the argument on page 13 of applicant's remarks in regards to claim 39; *"While Walker generally describes that a handheld device may be used in some lottery contexts, it neither teaches nor describes a handheld device that provides an interactive Internet game based on a code read from a **preprinted instant lottery ticket.**"* Walker describes is column 5 lines 1-8, that a handheld device can be used instead of a kiosk, ATM or Lottery terminals, all of which are known to have built-in printers, just as hand held devices are known to have printers. As such the addition of Walker is not done in a vacuum but after combining Kaye and Roberts, And as so include all the features of the preprinted interactive Internet game.

**11.** Regarding the argument on page 14 of applicant's remarks in regards to claim 39; *"Separately and independently from the arguments made above for its parent claim, claim 55 recites "providing the interactive game information on the removable covering", e.g., on a peel off or pull off layer concealing the instant game information. As discussed previously, the interactive game information is information used to play an interactive game using a computing device. Mullins neither teaches nor suggests providing information used to play an interactive game using a computing device, and certainly does not suggest providing such information on a removable covering for an instant game."* Walker describes is column 5 lines 1-10, about

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the generation of the information using an on-line computer (Internet), and column 2 lines 25-63 talks about the code hidden under a covering to be removed to expose the prize. The system being interactive comes from the combination and being that a § 103(a) rejection was made over the combination of Kaye and Roberts, only the teaching of the concealed medium need apply for this rejection.

**12.** It is the examiner's position on the 35 U.S.C. §103(a) Patent Law, and interpretation of the KSR Ruling; that a combination of features or limitation already in existence and being of analogous art, not just Gaming, but being as precise as related to a Lottery Game, would be all obvious to one of ordinary skill, and that any iterations of the combinations of these limitations would be predictable without hindsight. An inventive step, something out of the ordinary should be present in order to invoke improper hindsight.

**13.** For the above reasons mentioned, the examiner deems the arguments not persuasive.

### ***Claim Rejections - 35 USC § 103***

**14.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**15. Claims 27-38, 43-54 and 60-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye (US 5,569,082), in view of Roberts (US 5,772,510).**

Regarding the analogous art combination; Kaye discloses a Personal Computer Lottery Game that includes a special Destiny code or hidden prize code as a feature in a Lottery Ticket; Roberts discloses a ticket dispensing method where the players have a

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choice to buy tickets with or without certain special features. Both inventions disclose Lottery Ticket Systems.

**16. Regarding claims 27 and 48; Kaye discloses:**

A lottery gaming system, comprising: a lottery ticket, the lottery ticket including a ticket identifier, an interactive game information, and an instant game information, and a removable covering concealing the instant game information, (col. 1:25-35).

A lottery ticket dispenser configured to dispense the lottery ticket, (col. 4:40-52).

The lottery ticket dispenser configured, responsive to receiving the input indicating the player's choice to purchase the lottery ticket, (col. 4:40-52), without activating the lottery ticket for use in the interactive Internet game, to dispense the lottery ticket without activating the lottery ticket for use in the interactive Internet game, (col. 7:45-54; where a player may choose on a menu to play either a simple "lotto" game or an interactive "horses game" using a lottery ticket).

A central computer system in communication with the lottery ticket dispenser and configured to receive from the lottery ticket dispenser an indication that the player has chosen to purchase the lottery ticket for use in the interactive Internet game, the central computer system configured to, responsive to the receipt of the indication, to activate the lottery ticket for use in the interactive Internet game, (col. 4:40-52; where a central single computer network controls lottery information and distribution), and a computing device remote from and in communication with the central computer system via the Internet, the computing device configured to receive the interactive game information from the lottery ticket, the computing device further configured to be utilized by the player to play the interactive Internet game based at least in part on the interactive game information, (col. 3:4-12), (Fig. 6), "on-line service"(Internet).

Kaye fails to disclose games without the features of his invention (destiny bonus), yet shows the ability of the player to choose among a selection of different games.

Roberts discloses: A lottery ticket dispenser configured to dispense the lottery ticket, the lottery ticket dispenser including an input device configured to receive, prior to the lottery ticket being dispensed, an input indicating a player's choice between



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purchasing the lottery ticket as a hybrid instant lottery ticket that is also usable in an interactive Internet game and purchasing the lottery ticket without activating the lottery ticket for use in the interactive Internet game, (fig. 7 and description; whereas the dispenser contains games that are scratch off and games that are not);

a preprinted instant lottery ticket, (col. 4:7-21), wherein the preprinted barcode is read by the dispenser previous to printing the activation information on the selected card.

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the vending machine style of Roberts to the Kaye invention to reach more types of gamblers and combined them into a single system as an application of well known dispensing apparatuses.

Very little is required to combine the optional interactive game of Roberts into Kaye's invention, since Kaye already teaches the additional interactive game, Roberts just discloses the sale of tickets without special features or standard tickets. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention, to continue selling the previous type of lottery ticket along with the new feature ticket so as to not loose the previously establish clientele following and allow for more selections for the players.

**17. Regarding claims 28 and 50;** Kaye discloses a lottery gaming system wherein the lottery ticket dispenser includes a printer configured to print the interactive game information on the lottery ticket responsive to the indication that the player has chosen to purchase the lottery ticket for use in the interactive Internet game (col. 3:4–12, Fig. 6).

**18. Regarding claims 29 and 49;** Kaye and Roberts disclose all the limitations of claims 27 and 48 from which claims 29 and 49 depend on; and Roberts further discloses a lottery game system wherein the lottery ticket is pre-printed with the interactive game information, the ticket dispenser including a reader configured to read the ticket identifier from the lottery ticket prior to the ticket being activated for use in the

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interactive Internet game, (col. 4:7-21), wherein the preprinted barcode is read by the dispenser previous to printing the activation information on the selected card. Since Roberts uses a scanner to identify the type of card being purchased it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the scanner in the Kaye/Roberts combination already made above in claim 27. It would be required to identify the type of card before printing.

**19. Regarding claim 30;** Kaye and Roberts disclose all the limitations of claims 27 and 29 from which claim 30 depends on; and Roberts further discloses a lottery game system, wherein the reader is configured to read the ticket identifier from the lottery ticket prior to the lottery ticket being dispensed, (col. 4:7-21), wherein the preprinted barcode is read by the dispenser previous to printing the activation information on the selected card. Since Roberts uses a scanner to identify the type of card being purchased it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the scanner in the Kaye/Roberts combination already made above in claim 27. It would be required to identify the type of card before printing.

**20. Regarding claims 31 and 51;** Kaye and Roberts disclose all the limitations of claims 27, 29 and 48 from which claims 31 and 51 depend on; and Roberts further discloses a lottery game system, wherein the ticket dispenser is further configured to communicate the ticket identifier read from the lottery ticket to the central computer, (col. 4:7-21), wherein the preprinted barcode is read by the dispenser previous to printing the activation information on the selected card. Since Roberts uses a scanner to identify the type of card being purchased it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the scanner in the Kaye/Roberts combination already made above in claim 27. It would be required to identify the type of card before printing.

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**21. Regarding claims 32 and 53;** Kaye discloses a lottery game system wherein the ticket identifier and interactive game information are encoded in a bar code (col. 2:55–58; col. 3:7–12; where a bar code is a type of symbolic encryption that may be used to encrypt destiny codes that may be stored on a paper medium).

**22. Regarding claim 33;** Kaye discloses a lottery game system wherein the ticket identifier and interactive game information are separate and apart on the ticket (col. 7:20–24; where interactive game information is stored in a destiny code and a ticket identification serial number history is stored in a separate location).

**23. Regarding claim 34;** Kaye discloses a lottery gaming system wherein the interactive game information includes an access code configured to permit the player to access the interactive Internet game (col. 3:23–25).

**24. Regarding claim 36;** Kaye discloses wherein the interactive game information further includes an Internet address where the player can access the interactive Internet game (col. 9:1–3; where an on-line component for games is used, which may include the Internet).

**25. Regarding claim 37,** Kaye discloses a lottery gaming system wherein the computing device is remote from the lottery ticket dispenser (col. 3:4–15; col. 4:53–61).

**26. Regarding claims 43 – 44,** Kaye discloses a lottery gaming system wherein the interactive game information is pre-printed on the lottery ticket and activated in response to a transmission of the identifier to the central computer system (col. 3:23–25) and the central computer system is further configured to transmit the interactive game information to the ticket dispenser and wherein the ticket dispenser is configured, responsive to the receipt of the interactive game information from the central computer, to print the interactive game information on the game ticket (col. 6:1–6).

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**27. Regarding claims 45 – 46,** Kaye discloses a lottery gaming system wherein the removable covering is a scratch-off layer and wherein the removable covering includes the interactive game information (col. 1:25–32; where a removable covering includes game information).

**28. Regarding claim 52,** Kaye discloses a method wherein the activating the lottery ticket occurs prior to providing the player the lottery ticket (col. 3:16–45; where a destiny code is generated and activated by a dispenser before it is given to a player, and later verified for use in an interactive game).

**29. Regarding claim 54,** Kaye discloses a method including crediting an account of the player if the player wins the interactive Internet game (col. 8:48–61).

**30. Regarding claim 38,** Kaye discloses a lottery gaming system wherein the computing device is remote from the lottery ticket dispenser (col. 3:4–15; col. 4:53–61), but does not disclose that the computing device is incorporated into the lottery ticket dispenser. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the game system using separate lottery dispensing and player terminals of Kaye with an integrated lottery dispensing and player terminal in order to increase convenience for a player by providing all elements of a gaming system in one location.

**31. Regarding claim 47,** Kaye and Roberts disclose all the limitations of claim 27 from which claim 47 depends on; and Roberts further discloses a lottery ticket, but does not disclose a specific method of storing lottery tickets. However, Roberts teaches a lottery ticket wherein the lottery ticket is releasably coupled by lines of weakness to additional lottery tickets in a fan fold stack of lottery tickets (col. 3:29–30), in order to organize tickets for dispensing. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the lottery and

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interactive game system using tickets of Kaye with the fan folded tickets of Roberts in order to better organize tickets for dispensing.

**32. Regarding claims 60 and 61**, Kaye and Roberts disclose all the limitations of claims 27 and 47 from which claims 60 and 61 depend on; and Kaye further discloses wherein the computing device is further configured, responsive to receipt of an indication that the lottery ticket has not been activated for use in the interactive Internet game, to prevent the player from playing the interactive game using the lottery ticket, (col. 6:45-47).

**33. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye and Roberts, as applied to claim 27 above and in view of Walker et al. (US 6,497,408 B1).**

**34.** Regarding the analogous art combination; Kaye, Roberts and Walker all three disclose teaching regarding Lottery Systems operated on-line.

**35. Regarding claim 39**, Kaye and Roberts disclose a lottery gaming system, with a computing device as covered in claim 27 above, but fail to disclose a portable device. Walker discloses the computing device can be a handheld device, (Col. 5:1-8 and 22-25). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention after reading Walker's disclosure, to enhance the player interface device by making it portable and handheld. Using the known technique of handheld lottery consoles of Walker, to substitute for the personal computer lottery of Kaye/Roberts would have been an obvious predictable result to one of ordinary skill.

**36. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye and Roberts as applied to claim 48 above, and further in view of Mullins (US 5,158,293).**

**37.** Regarding the analogous art combination; Kaye, Roberts and Mullins all three discloses teaching involving an on-line lottery system.

**38. Regarding claim 55; Kaye and Roberts disclose** all the limitations recited in claim 48 from which claim 55 depends, and although Kaye is silent about continuing the game after an instant win. Mullins discloses providing the interactive game information on the removable covering; after the removable covering has been removed by the player, receiving a tender of the lottery ticket without the removable covering for a prize in the instant win game; responsive to receiving the tender of the lottery ticket, redeeming the lottery ticket for a the prize in the instant win game; and providing the interactive game play to the player at the computing device after the player has redeemed the lottery ticket for a prize in the instant win game; the receiving at least a portion of the interactive game information from the ticket at the computing device occurs after the tender of the lottery ticket, the interactive game information being provided by the player from removable covering, (abstract, col. 2:25-63; in which Mullins covers a lottery ticket with a redeemable instant win and keeping the remainder of the ticket for accumulation of letters for the progressive win). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the very well known method of Mullins in the Kaye and Roberts invention to introduce yet another winning level in the game. These features are not novel but very well known methods of entertainment in the lottery arts, which yield a predictable result.

***Examiner's Note***

**39.** The referenced citations made in the rejection(s) above are intended to exemplify areas in the prior art document(s) in which the examiner believed are the most relevant to the claimed subject matter. However, it is incumbent upon the applicant to analyze the prior art document(s) in its/their entirety since other areas of the document(s) may be relied upon at a later time to substantiate examiner's rationale of record. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

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However, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed .... "In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **FRANK M. LEIVA** whose telephone number is (571)272-2460. The examiner can normally be reached on M-Th 9:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter D. Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/

Supervisory Patent Examiner, Art  
Unit 3714

FML

03/15/2010.